

APPEAL NO. 041491
FILED AUGUST 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 2, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a repetitive trauma injury while in the course and scope of her employment; (2) the claimant did not have disability; (3) the date of injury (DOI) pursuant to Section 408.007 is _____; and (4) the respondent (carrier) is relieved from liability pursuant to Section 409.002, because of the claimant's failure to timely notify her employer pursuant to Section 409.001. The claimant appealed the hearing officer's adverse determinations based on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable repetitive trauma injury and that she gave timely notice of the injury to her employer. The claimant claimed that she sustained a repetitive trauma injury as a result of performing her work activities for the employer. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

Conflicting evidence was presented regarding the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Our review of the record reveals that the hearing officer's determinations regarding compensable injury, date of injury, and timely notice are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the challenged determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge